

Message Text

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00

DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

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TO SECSTATE WASHDC PRIORITY 8698

CONFIDENTIAL USUN 3272

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT--
AUGUST 16

1. INFORMAL PLENARY AUGUST 16 COMPLETED ART. 10 AND
BEGAN ART. 11(EXPERT ADVICE AND ASSISTANCE).

2. REGARDING ARTICLE 10, EL SALVADOR SUPPORTED PREVIOUS
DAY'S EXPRESSION OF CAUTION BY US REP AND URGED INCLUSION
IN MAIN ARTICLES OF PART IV OF THE ESTABLISHMENT OF
PRIMARY JURISDICTION FOR THE FORA, WITH RESPECT TO
VARIOUS SUBJECT MATTERS. HE SAID SOME ANNEXES ESTABLISHED
SOME JURISDICTION, BUT THAT ICJ STATUTE DID NOT AND THERE
WAS NO GRANT OF JURISDICTION TO ICJ IN THE ANNEXES.
WHILE SOME CHANGES IN ARTICLE 10 MAY BE NECESSARY, THE
SUBSTANCE OF IT SHOULD BE RETAINED. GUATEMALA SUPPORTED
EL SALVADOR.

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3. REGARDING ART. 11, VENEZUELA, MALAYSIAN, NETHERLANDS, SWITZERLAND, GREECE, AUSTRALIA, CANADA, AND USA WISHED TO CLARIFY PARA. 2 TO MAKE CLEARER THAT OPINIONS OF EXPERTS ARE NOT RPT NOT BINDING ON PARTIES OR TRIBUNAL. SEVERAL OF THESE STATES CALLED INTO QUESTION THE REFERENCE TO SETTLEMENT OF THE DISPUTE ON THE BASIS OF THE EXPERTS' OPINION ON GROUND THAT THIS AMOUNTS TO FINAL DECISION AND DEPRIVES THE COMPETENT FORUM OF RESPONSIBILITY FOR DECISION. ISRAEL SAID THERE WAS NO NEED FOR A REFERENCE TO THE POSSIBILITY OF SETTLEMENT BY THE PARTIES SINCE THAT COULD BE DONE BY JOINT ACTION OF THE PARTIES AT ANY TIME. AUSTRALIA AND US SUGGESTED THAT AN OPPORTUNITY FOR SETTLEMENT IN THE COURSE OF LITIGATION MIGHT BE DESIRABLE, AND THAT DIFFERENT PROVISIONS ARE NEEDED FOR CASES OF PARTIAL AGREEMENT BY THE PARTIES FOR CASES WHEN THEY CANNOT AGREE.

4. SWITZERLAND AND ISRAEL NOTED DUPLICATION BETWEEN ART. 11 AND ART. 30 AND 50 OF STATUTE OF THE ICJ AND SUGGESTED STATUTE OF THE ICJ IS SUFFICIENT. AUSTRALIA WISHED TO BROADEN STATUTE OF ICJ THROUGH LOS CONVENTION ARTICLES.

5. VENEZUELA SUGGESTED TRIBUNAL SHOULD DEFINE BASIS OF EXPERTS WORK AND DECIDE UPON REQUEST OF A PARTY TO REFER MATTER TO EXPERTS. AUSTRALIA SUGGESTED THAT TRIBUNAL SHOULD CONSULT WITH PARTIES TO A DISPUTE WITH A VIEW TO GAINING THEIR ASSENT TO THE FORMULATION OF THE QUESTION FOR THE EXPERTS, THAT CHOICE OF PERSONS TO ACT AS EXPERTS OR ACCESSORS SHOULD NOT BE LIMITED TO LISTS EMPLOYED IN ANNEX II, THAT THE EXPERT COMMISSIONS SHOULD BE OBLIGED TO HEAR ARGUMENTS BY THE PARTIES AND PROVIDE OTHER SAFEGUARDS, AND THAT EFFECT OF THE OPINION SHOULD BE SPECIFIED. US SUPPORTED GREATER FLEXIBILITY IN CHOICE OF PERSONS AND SIZE OF EXPERT COMMISSIONS, AND POINTED OUT THAT WHERE ICJ HAD UTILIZED EXPERT ADVICE, IT HAD SET PROCEDURES AND PROVIDED FOR HEARING.

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